

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

COLORQUICK, L.L.C.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	No. 6:09-CV-323
v.	§	
	§	JURY DEMANDED
VISTAPRINT LIMITED, and	§	
OFFICEMAX INCORPORATED,	§	
	§	
<i>Defendants.</i>	§	

**PLAINTIFF COLORQUICK L.L.C.’S SUPPLEMENTAL BRIEF IN SUPPORT OF
OBJECTIONS TO REPORT AND RECOMMENDATION OF U.S. MAGISTRATE
JUDGE DENYING PARTIAL SUMMARY JUDGMENT ON DEFENDANT’S
VISTAPRINT.COM INVALIDITY DEFENSE (Dkt. No. 196)**

ColorQuick respectfully submits this supplemental brief to its Objections¹ in view of the magistrate judge’s Order of June 14, 2011,² which precludes Vistaprint “from presenting any evidence relating to prior inventorship or a 35 U.S.C. § 102(g) defense.” The Order provides further reason why the May 16, 2011 Report and Recommendation denying ColorQuick’s Motion for Partial Summary Judgment on Defendant’s Vistaprint.com Invalidity Defense.³

ColorQuick moved for partial summary judgment that Vistaprint cannot, as a matter of law, establish that the asserted claims are invalid in view of Release 5.1 of Vistaprint.com under 35 U.S.C. §§ 102(a), 102(b), or 102(g).⁴ In its June 3, 2011, response to the Objections, Vistaprint clarified that it does not contend that Vistaprint.com is a prior art reference under §

¹ (See Dkt. 216).

² (See Dkt. 262).

³ (See Dkt. 196).

⁴ (See Dkt. 216 at 1).

102(a).⁵ Then on June 14, 2011, the magistrate judge precluded Vistaprint from offering evidence relating to § 102(g). Thus, the only issue that remains is whether Vistaprint can establish invalidity under § 102(b).

As explained in the Objections and subsequent reply, Vistaprint has admitted that it can provide no evidence of prior public use or sale of the claimed methods, and thus its defense under § 102(b) must fail as a matter of law.⁶

Dated: June 18, 2011

Respectfully submitted,

/s/ Justin B. Kimble

Patrick J. Conroy

State Bar No. 24012448

Justin B. Kimble

State Bar No. 24036909

Derek N. Johnson

State Bar No. 24060027

Timothy T. Wang

State Bar No. 24067927

SHORE CHAN BRAGALONE

DEPUMPO LLP

901 Main Street, Suite 3300

Dallas, Texas 75202

(214) 593-9110 Telephone

(214) 593-9111 Facsimile

ATTORNEYS FOR PLAINTIFF

COLORQUICK, L.L.C.

⁵ (See Dkt. 226 at 2, n. 3).

⁶ (See Dkt. 231 at 2-3).

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed **PLAINTIFF COLORQUICK L.L.C.'S SUPPLEMENTAL BRIEF IN SUPPORT OF OBJECTIONS TO REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE DENYING PARTIAL SUMMARY JUDGMENT ON DEFENDANT'S VISTAPRINT.COM INVALIDITY DEFENSE (Dkt. No. 196)** with the clerk of court for the United States District Court, Eastern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

June 18, 2011
Date

/s/ Justin B. Kimble